

ANOTHER DECISION.

Judge Philips Decides an Original Package Case.

Further Proceedings Against Package Agents Stopped—Judgment of the Supreme Court Law Until Congress Acts.

TOPEKA, Kan., July 17.—Two decisions by Judge Philips, of the United States Federal Court of Missouri, in the original package cases were filed at three o'clock yesterday afternoon.

The first opinion, covering twenty-five pages of type writing, is in the cases of Bernard Tuchman against R. B. Welch, county attorney, and of Landis Yount against the same. Tuchman is the agent of the Anheuser-Busch Brewing Association of St. Louis, Mo., and Yount is the agent of the Joseph Schlitz Brewing Association of Milwaukee, Wis. The facts which led to this litigation are briefly these: The brewing companies shipped large quantities of beer to their agents at Topeka, who were also non-residents of the State. For selling this beer in the original packages in which they were shipped the agents were arrested under criminal prosecutions for violating the local Prohibitory law of the State. At the same time the county attorney filed petitions against them in the local district court to have their places of business declared a nuisance and the agents enjoined from further using the houses. On these petitions the judge of the court made an order of injunction, without any bond of indemnity being required of the county attorney or the State and without any notice to the agents or the brewing companies. Tuchman and Yount thereupon applied to the United States Circuit Court for release under the writ of habeas corpus and, on hearing before Judge Caldwell, United States Circuit Judge, they were discharged from arrest on the ground that under the recent decision of the Supreme Court in the Iowa case the brewing companies had a right to import beer into the State and the agents had the right to sell the same in the original packages in which they came and that the agents had not otherwise sold beer. The county attorney threatening to continue to so prosecute the agents and to have them arrested in the State court for violating the order of injunction therein granted by resuming business as theretofore after their discharge by Judge Caldwell, they filed their bill in equity in the United States Circuit Court, charging that the purpose of Welch was to so harass and annoy the agents by having them arrested for contempt as to prevent them from pursuing their lawful business and destroy the same and asking to have him enjoined therefrom.

The Attorney-General of the State appeared and demurred to this bill. Judge Philips by order of the Circuit Judge sat with Judge Foster in the hearing of these cases and wrote the opinion.

The first question discussed is as to whether or not this is a suit against the State, and as such interdicted by the Eleventh amendment of the Federal Constitution, which declares that the State can not be sued by a private citizen without a consent. The opinion discusses the earlier decisions of the Supreme Court which held that in determining the question of jurisdiction under the Eleventh amendment they should look to the record alone, and it was the party named in the record and not the party who might be back of the case. The more recent rulings of the Supreme Court, however, are that where the officers sued, such as the Governor and other State officers, have no real interest in the controversy, and the State alone is to be affected by the judgment, and the decree would be inoperative unless against the State, it may be deemed as a proceeding against the State. The case of Ayers, Attorney-General of Virginia, 123 U. S. 443, is then reviewed, in which although the suit was against the Attorney-General and other officers of the State, yet, as the real purpose was to enforce a right founded in contract, to which the State alone was a party, and any judgment rendered could be effectual only as against the State for breach of contract which the State alone could perform, the suit is still in substance though not in form a suit against the State.

The opinion then proceeds to discuss the true ground of distinctness, so far as the protection of the Federal Constitution is concerned, between the contract rights of the complainant and other rights of person and property and shows that a broad line of demarcation separates from such cases as that of Ayers and others against the officers in name but against the State in effect, in which the decree required by affirmative official action on the part of defendants the performance of the obligation which belongs to the State in its political capacity, and those in which suits in equity are maintained against defendants who while claiming to act as officers of the State, violate and invade the personal rights of the citizen under color of authority which is unconstitutional and void. In the latter case the officer can not shield himself from individual responsibility or the restraining power of the court by taking shelter behind the State law in conflict with the supreme law of the land.

Nothing, the opinion declares, can be interposed between such a defendant and the obligation he owes to the Constitution and laws of the United States, which can shield him from their just authority, the extent and limits of

which the Government of the United States, by means of its judiciary, interprets and applies for itself. The State has no power to impart to him immunity from responsibility to the supreme authority of the United States. The State of Kansas is not a party to this record and the injunction, if granted, operates not upon the State as such, but upon Welch in personam. No obligation in law or morals rests upon the county attorney to do that which would be violative of the supreme law of the land, and no right of the State can be invaded by restraining the county attorney from an act which, if done by him, would at once be nullified by this court by discharging the prisoner again under habeas corpus.

The threatened attempt, the opinion continues, of the county attorney to proceed against the petitioner for contempt after his discharge from arrest by the United States Court, for doing that which the Supreme Court says he has a constitutional right to do, is an open disregard of the authority of the Supreme Court and the United States Circuit Court, and it would be an anomalous state or affairs if a local officer could thus under the garb and color of a State law in conflict with the supreme law of the land by repeated arrests, prosecutions and annoyances, drive the citizens from the pursuit of a lawful business, and there be no power in the courts of the Federal Government to prevent such outrages and protect the citizen in the enjoyment of a constitutional right.

As applied to the constitutional aspect of the question, the opinion continues, there can be no difference between shoes and beer. For exercising his constitutional right Tuchman was arrested under the conflicting State law of Kansas and his house of business closed by an order of injunction. Judge Caldwell discharged him from the criminal arrest under the writ of habeas corpus, and now, despite the law and the decisions of the Federal courts, the respondent threatens to continue to enforce said injunction. It would be an impotent Government whose judicial branch is without the power to challenge such repeated infractions of the citizen's personal liberty and constitutional right to pursue a lawful business. If arrested for such contempt this court could discharge him again on habeas corpus, but on respondent's theory he would and could again proceed against him for violation of the State injunction.

The opinion invokes the Fourteenth amendment, which declares that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. While this amendment had its inception in the purpose to secure to the freedmen of the South the full enjoyment of their freedom and rights, as has been repeatedly held by highest authority the generality of the language used extends the protection of its provisions to persons of every race and color and condition against the hostile State action of any kind.

"A most earnest appeal," the opinion concludes, "is made by respondent to this court to leave unmolested the officers of the State in this controversy to proceed to the customary channels of the State courts, leaving the petitioner his remedy, after final decision in the court of last resort in the State, of appealing to the United States Supreme Court. We sensibly recognize the importance of the rule of comity invoked as essential to the preservation of the harmony and peaceful operations between the courts of the two jurisdictions. But I feel sure that in the coming time of dispassionate consideration and calmer reflection, when the feverish excitement of popular local sentiment shall give way to reason and a broader National spirit, the intelligence and patriotism of counsel will pronounce judgment for his constituents acquitting the Federal judiciary in this controversy of the imputation of unduly interfering when they are executing the high behests of the Federal Constitution. Is it not rather the respondent and his abettors who should recognize the rule of comity? The Supreme Court of the United States has declared so much of the law of Kansas as prohibits the importation of liquors, etc., into the State and therein in the original packages as unconstitutional. The United States Circuit Judge, in obedience to his oath of office, has reaffirmed and applied that decision to these prosecutions. Until Congress shall interpose and confer upon the State the right to regulate this matter, loyalty to the supreme law of the land, and the obligation of good citizenship demand that the State and its ministerial officers should forbear to provoke the occasion for the Federal judiciary to assert their jurisdiction to see that the Federal Constitution is recognized and obeyed. The most august thing in government is law and the highest duty of citizenship is obedience to and respect for the law. My opinion is that sufficient appears to entitle the petitioner to the temporary writ of injunction."

Judge Foster concurred in the opinion.

Missouri Pacific Stock Increased.

St. Louis, July 17.—At the meeting of the stockholders of the Missouri Pacific Railway Company held here, it was voted to increase the capital stock of the company to \$10,000,000, and the bonded indebtedness by the same amount.

TEMPERANCE ADVOCATES.

Great Mass Convention at Topeka—Nearly Three Thousand Delegates Present—Resolutions Adopted and Address to the Public.

TOPEKA, Kan., July 17.—The mass convention held in this city yesterday under the auspices of the Kansas State Temperance Union called together nearly 3,000 duly appointed delegates.

It was intended to hold two meetings, but the attendance was so large that two overflow meetings were held. James A. Troutman, Rev. D. C. Milner, Judge John W. Day and Rev. Bernard Kelly presided at the different meetings. Addresses were delivered by many prominent speakers.

The resolutions adopted were as follows:

The assumption by a Federal judge that he has power to restrain the local officers of a State, whose duty it is to investigate alleged violations of the statutes of a State, from making any such investigation, is not only in direct violation of Congressional legislation, but is at once destructive of our local judicial system. It is a glaring departure from the early practice of the Federal judiciary and is antithetical to the universally conceded theory that the State authorities are supreme within the sphere of their action. We demand of Congress such speedy legislation as will permit the State Government to have full, complete and exclusive power to regulate, control or prohibit the manufacture, sale and use of intoxicating liquors within the borders of each State. We tender hearty thanks to Governor Lyman U. Humphrey for his efforts in behalf of good order and the just observance of the laws of the State, and we commend Attorney General L. B. Kellogg for his able efforts in behalf of the State control of the liquor traffic.

Resolved, That we deem it right and the duty of our State authorities to test the unprecedented decision recently handed down restraining them from the performance of their sworn duties under our Constitution and laws and we pledge to Governor Lyman U. Humphrey and Attorney General L. B. Kellogg the support of the people whom we represent in every lawful effort they may deem it their duty to make to protect the State against the new invasion of rights.

Resolved, That this convention of 3,000 delegates, representing every county in Kansas, send greetings to the temperance people of Nebraska and extend to them sympathy and support in their gallant fight against the saloon.

Resolved, That this convention urge upon our delegation in Congress, the imperative necessity of such immediate legislation as will give relief from the original package decision of the United States Supreme Court.

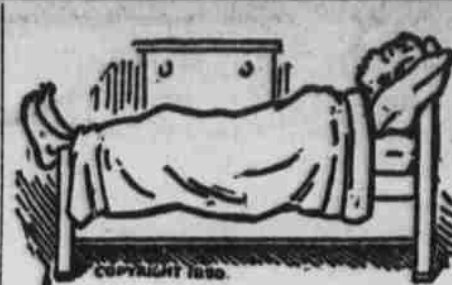
Resolved, That the chairman of this convention be requested to appoint a committee of fifteen, of whom five shall be practicing attorneys, five farmers and five business men, who shall act as an advisory body to aid the law officers of the State in such a way as they may desire in the vigorous enforcement of the Prohibitory laws of the State.

Resolved, That the temperance people of Kansas are hereby requested to send such material support as will fully indemnify any officer against pecuniary loss resulting from the lawful discharge of his official duties.

Resolved, That we call upon our people of Kansas in all parts of the State to give earnest and unwearied attention to the election of members of the next Legislature whose attitude toward prohibition will not be doubted.

THE ADDRESS.

The temperance people of Kansas in delegate convention assembled, submit the following address: The question of Prohibitory legislation was submitted to a direct vote of the people of Kansas at the general election held in November, A. D. 1890, and adopted. At every election for State officers held since that time direct issue has been made on this question. At each successive session of the Legislature since the adoption of the Prohibitory amendment the statutes supplemental to and in aid of the constitutional provisions have been made more vigorous and effective by an almost unanimous vote. In almost every Representative district in this State this question has been the important and controlling issue for the last ten years. At all these elections and during all these years the sentiment in favor of prohibition has increased to such an extent that now it can be said with absolute truth that by the deliberate judgment of the people of Kansas prohibition is as much favored as a part of our organic law as the homestead provision of the Constitution. In view of these facts, the demand for re-submission is not only uncalculated, but entirely indefensible. The battle for prohibition has been fought in accordance with all the terms of law and fairly won. The good people of Kansas never fight but they conquer. The young State is a child of victory. It was born with its face to the rising sun, and by the laws of its origin it can never take a backward step. We demand for the people of Kansas the same right to regulate and control the manufacture, sale and use of intoxicating liquors that both sacred and profane history records has been exercised by every civilized government that ever existed on the face of the earth. For more than 1,000 years local restricted legislation has been directed by Nations, States, counties, cities and all other political subdivisions known to civil government, against the blighting influences and inexorable views of this monstrous evil. Centuries of hostile legislation has made this self-evident agent of destruction the subject of local control and management and such remedial agencies have been applied as would prove most effective in different localities. In view, therefore, of the historical fact that vinous, fermented and distilled liquors have from time immemorial been the subject of local regulation and control, we respectfully protest against the idea that the nefarious traffic in intoxicating liquors is so protected by the provisions of our Federal Constitution that it is beyond the reach and above the power of State legislation. We do not believe that it was the intention of the framers of our fundamental law to protect a traffic against which all people in all ages have directed their best efforts in restrictive legislation in the attempt to lessen its evils and destroy its baneful power. We earnestly protest against the establishment of "original package saloons" in our State as being in defiance of public sentiment, in violation of positive local law, as against common right, as hostile to good order, as encouraging lawlessness, as productive of crime and as being the "sum of all villainies," and we do hereby publicly proclaim our hostility to these dens of wickedness and pledge every lawful effort to suppress them. The State of Kansas is the hottest bed of prohibition and prohibition acquired its right to the soil of our State by permanent occupancy and by making lasting and valuable improvements. The metes and bounds of its possessions are the exterior lines of the State. Its warranty deed is recorded in the hearts of the people and its monuments of title can be seen in every church building, school house and happy home in our prosperous State. It is the fairest inheritance ever given to a contented people and the sun power has no mortgage on it.



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